CF0000057410

(2)

Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH : AT JABALPUR.

CR.APPEAL NO. 291 OF 1990.

Dilip Kumar s/o Sukhram Satnami aged 24 years R/o Kutser P.S. Arag Tahsil/ Distt. Raipur M.P.

.... APPELLANT. (IN JAIL)

Vs.

The State of Madhya Pradesh ...RESPONDENT.

CR.APPEAL U/s.374(2) OF THE CR.P.C.

1964

13-3-90
R.S. Shukla

13/3/90

A.F.R.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.291/1990

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Dilip Kumar

Versus

State of Madhya Pradesh (now State of Chhattisgarh)

Shri Arun Kochar, Counsel for the appellant.

Shri Parag Kotecha, P.L. for the State.

JUDGMENT

(Delivered on this 16th day of June 2006)

This appeal is directed against the judgment dated 8.3.1990 delivered by Shri K.L.Kori, 1st Additional Sessions Judge, Raipur in Sessions Trial No. 86/87 whereby the appellant was convicted under Section 376 I.P.C. and was sentenced to undergo rigorous imprisonment for seven years.

2. The factual matrix, in brief, is that the prosecutrix, a minor girl aged about 13 years, had gone to village Kutesar, to the house of her maternal uncle Baanduram P.W.3 for performing certain agricultural operations. Her father Itwari lived in village Dumartarai. On 22.12.1986 at about 8.30 A.M. while the prosecutrix had gone to collect cow-dung, the appellant came from the nearby village tank and forcibly committed rape on her after gagging her mouth by a piece of cloth. After committing rape, the appellant threatened the prosecutrix not to disclose the incident to anyone. However, the

prosecutrix promptly informed the incident to her maternal uncle Baanduram P.W.3, Dashrath P.W.12 and Jagdish P.W.4 and lodged a prompt F.I.R. in Police Station Aarang situated about 22 kilometers west, at about 2.30 P.M. on the same day. She was sent for medical examination. Dr. Ku. Shobha Ramanna P.W.1, on examination, did not find any external injury on her person. She also did not find any injury on her private parts. No definite opinion regarding sexual intercourse by the appellant could be given. Petticoat (article-A) and *saaree* (article-B) worn by the prosecutrix at the time of occurrence were seized immediately after recording the F.I.R. vide Ex.P.12 at 2.30 P.M. The appellant was apprehended and the underwear worn by him was also seized vide Ex.P.13. The petticoat and *saaree* of the prosecutrix and the underwear of the appellant were sent to Forensic Science Laboratory for chemical examination. Vide report Ex.P.16 the presence of semen and human spermatozoa was confirmed on the petticoat (article-A) and the *saaree* (article-B) of the prosecutrix while no such stains were found on the underwear of the appellant. Ossification test for determining the age of the prosecutrix was conducted by Dr. S.C.Vishnoi P.W.6. Vide report Ex.P.6, the age of the prosecutrix was estimated as 13 - 14 years. The cloth (article-C) by which the appellant had gagged the mouth of the prosecutrix and lying at the place of occurrence was seized vide Ex.P.4. Dr. S.C.Shrivastava P.W.5 examined the appellant on 23.12.1986 and found that he was capable of performing sexual intercourse. No smegma was found on the penis of the appellant at the time of examination suggesting possibility of sexual intercourse by the appellant. After completion of investigation, the appellant was prosecuted under Section 376 I.P.C.

3. The appellant abjured the guilt, pleaded false implication by the prosecutrix at the behest of Baanduram P.W.3 due to a property

dispute and examined Shankerlal as D.W.1 and Human Das as D.W.2. The prosecution examined as many as 14 witnesses. Relying upon the evidence led by the prosecution and the testimony of the prosecutrix, the learned trial Judge convicted and sentenced the appellant as aforesaid in paragraph-1.

4. Shri Arun Kochar, learned counsel for the appellant has argued that the defence adduced by the appellant clearly establishes false implication of the appellant by the prosecutrix at the behest of Baanduram P.W.3. The medical examination report of the prosecutrix by Dr.Ku.Shobha Ramanna P.W.1 clearly renders the testimony of the prosecution unworthy of credit. Reliance was placed on *Pappu v. State of M.P.* **2005 Cr.L.R. (30) [M.P.] 246**, *Bhoora s/o Bhogiram Lodhi v. State of M.P.* **2005 Cr.L.R.(30) [M.P.] 209**, *Ashok S/o Ramlal Kumahar (Potter) v. State of M.P.* **2004 Cr.L.R.(29) [M.P.] 805**, *Lekhram v. State* **2003 Cr.L.R.(28) [M.P.]151**, *State of M.P. v. Shantilal* **2003 Cr.L.R.(28) [M.P.]638** and *State v. Surajmal* **2003 Cr.L.R.(28) [M.P.]711**. On the other hand, Shri Parag Kotecha, learned Panel Lawyer for the State argued in support of the impugned judgment and placed reliance on *State of M.P. v. Dayal Sahu* **2005 AIR SCW 4839**, *State of Punjab v. Gurmit Singh and others* **1996 SCC (Cri) 316** and *Bodhisattwa Gautam v. Subhra Chakraborty (Ms)* **1996 SCC (Cri) 133**. It was argued that since the testimony of the prosecutrix was natural and inspired confidence as it was duly corroborated by Baandu P.W.3, Dashrath P.W.12 and Jagdish P.W.4, the absence of injuries on her vital parts during medical examination by Dr. Ku. Shobha Ramanna P.W.1 was not sufficient to dislodge the testimony of the prosecutrix which was wholly worthy of credit. It was also contended that the testimony of the prosecutrix was also corroborated by a prompt F.I.R. lodged by her and the report of F.S.L. which confirmed the presence of semen and human spermatozoa on

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the petticoat and the *saaree* of the prosecutrix seized immediately after lodging of F.I.R. on the date of occurrence.

5. Having heard the rival contentions, I have perused the record minutely. It is well settled that in sexual offence the testimony of the prosecutrix is not to be placed on the same footing as that of an accomplice and conviction can be based on the sole testimony of the prosecutrix if it is natural and inspires confidence. If this test is satisfied, the absence of injuries on the private parts of the prosecutrix would by itself not be sufficient to disbelieve her. The only point which requires consideration in this appeal is whether the testimony of the prosecutrix is natural and inspires confidence. I have gone through the testimony of the prosecutrix minutely. She has given a vivid description of the manner in which rape was committed on her by the appellant. Her testimony is fully corroborated by the prompt F.I.R. lodged by her at P.S. Aarang which was situated at a distance of about 22 kilometers away on the same day at 2.30 P.M. The testimony of the prosecutrix finds full corroboration by Baandu P.W.3 who is the maternal uncle of the prosecutrix and also by Dashrath P.W.12 and Jagdish P.W.4 to whom the prosecutrix had narrated the incident soon after the occurrence. Nothing has been elicited in cross-examination so as to disbelieve their testimony.

6. So far as the defence of false implication of the appellant by the prosecutrix at the behest of Baanduram P.W.3 is concerned, it is wholly unreliable. It is beyond comprehension that the prosecutrix, a minor girl aged 13 - 14 years, who had visited her maternal uncle, would falsely implicate the appellant for an offence of rape at the behest of her maternal uncle. As held in *Bharwada Bhoginbhai Hirjibhai v. State of Gujrat* **A.I.R. 1983 SC 753,** in a tradition bound society, particularly in a rural area, the parents of a minor girl

would not bring disrepute not only to their daughter but also to the family at the behest of another person. It is also unthinkable that parents would tutor their minor daughter to invent such story in order to wreak vengeance on someone. They would not do so for the simple reason that it would bring down their own social status in the society apart from ruining the future prospects of their own child. They would also be expected to be conscious of the traumatic effect on the psychology of the child and the disastrous consequences likely to ensue when she grows up. She herself would prefer to suffer the injury and the harassment rather than to undergo the harrowing experience of lodging a complaint in regard to a charge reflecting on her own chastity. I, therefore, refuse to countenance the defence suggestion that the appellant has been falsely roped in at the instance of the maternal uncle of P.W.2 who was supposed to have some enmity against the appellant. The evidence of Shankerlal D.W.1 and Human Das D.W.2 led by the appellant in defence is clearly an after thought and fails to inspire confidence. Shankerlal D.W.1 has gone to the extent of stating that the prosecutrix, a girl aged about 13 years is a woman of low morals. The defence of the appellant is thus palpably false.

7. Sub-Inspector Harshnath Singh P.W.14 has not only proved the prompt F.I.R. Ex.P.11 lodged by the prosecutrix but has also proved the seizure of petticoat and *saaree* of the prosecutrix on the same day. The testimony of Dashrath P.W.12 also shows that he had gone to the place of occurrence with the prosecutrix where the piece of cloth used by the appellant to gag the mouth of the prosecutrix was lying. He has also proved the seizure of cloth from the place of occurrence on 22.12.1986 vide Ex.P.4. The report of F.S.L. also established the fact that the petticoat and *saaree* of the prosecutrix which were seized immediately after the F.I.R. was lodged, had stains

of semen and human spermatozoa. Dr. S.C. Shrivastava P.W.5, who examined the appellant on 23.12.1986, also did not find any smegma on the penis of the appellant which was suggestive of recent intercourse by the appellant.

8. It is true that Dr. Ku. Shobha Ramanna P.W.1 did not find any external injury or any injury on the private parts of the prosecutrix, yet this by itself is not sufficient to discard the testimony of the prosecutrix which is natural and inspires confidence and is not only corroborated by the F.I.R. Ex.P.11 and the testimony of Baanduram P.W.3, Dashrath P.W.12 and Jagdish P.W.4 but also by the report of F.S.L. It is also to be borne in mind that the prosecutrix is a girl of tender age of 13 years and the perpetrator of the crime was an able-bodied young man who was determined to satisfy his lust and had gagged the mouth of the prosecutrix and after over powering her had committed rape on her. Therefore, the presence of injuries on the prosecutrix was not a necessary corollary of the rape committed by the appellant.

9. In *State of M.P. v. Dayal Sahu* **2005 A.I.R. SCW 4839** the Apex Court went to the extent of saying that even the non-examination of the doctor and non-production of doctor's report would also not be fatal to the prosecution case if the statement of the prosecutrix inspires confidence and is accepted by the Court as such and the testimony of other prosecution witnesses inspire confidence. It was held that corroboration of testimony of the prosecutrix as a condition for judicial reliance is a not a requirement of law but a guidance of prudence. Under the given facts and circumstances, I have no hesitation in holding that mere absence of injuries on the prosecutrix either on her person or on her private parts does not render her testimony unworthy of credit.

10. The citations relied on by the learned counsel for the appellant are clearly distinguishable since in this case the testimony of the prosecutrix is natural, inspires confidence and worthy of credit and is not only fully corroborated by the prompt F.I.R. Ex.P.11 but also corroborated by the testimony of the witnesses Baandhuram P.W.3, Dashrath P.W.12 and Jagdish P.W.4 and report of F.S.L. Ex.P.16.

9. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the conviction of the appellant under Section 376 I.P.C. and the sentence awarded thereunder by the learned trial Judge is well founded and does not call for any interference.

10. In the result, the appeal being devoid of merit is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani